

REMARKS

An Office Action was mailed in the above-captioned application on April 15, 2005. In such Office Action claims 31-36, 45-47, 49, 50, 53, and 79 were pending. Claim 79 was withdrawn from consideration. Claims 31-36, 45-7, 49, 50, and 53 were rejected. This Amendment and Remarks document is submitted in response to said Office Action and as a required submission with a Request for Continued Examination under 37 C.F.R. § 114.

Informalities

The Examiner has indicated that new claim 79 is directed to an invention that is independent or distinct from the invention originally claimed and has withdrawn the claim from consideration. Claim 79 has been cancelled.

The Rejection under 35 U.S.C. § 112, second paragraph

The Examiner has rejected Claims 31-33, and 45 under 35 U.S.C. § 112, second paragraph. The second paragraph of Section 112 requires that the claims set out and circumscribe a particular area which applicants regard as their invention with a *reasonable* degree of precision and particularity.

The rejection indicates that claims 31-33 are confusing because in line 3 of claim 31 and 33 the word “is” appears to be missing before “selected.” Claims 31 and 33 have been amended to add “is” before “selected.”

The rejection indicates that claim 45 is confusing because of the language “comprising selected from.” This language “comprising” has been removed from Claim 45.

Reconsideration is respectfully requested.

The Rejection under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 34-36, 45-47, 49, 50, and 53 under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art the inventors, at the time the application

Claims 31-36, 45-47, and 53 have been rejected as lacking written description for the recitation of “having at least 84% sequence identity.” Applicants maintain that that the recitation

of "having at least 84% sequence identity" is supported by the specification for the reasons detailed in the previous response. In the interest of expediting prosecution, however, this phrase has been amended to recite "having at least 75% sequence identity" in Claims 31, 33, 34, 45, and 46. Support for this recitation can be found in the specification, e.g., at page 15, lines 10-12; page 21, line 29 to page 22, line 1; and page 53, lines 7-9.

Claims 34-36, 45-47, 49, 50, and 53 have been rejected as the claims allegedly do not recite any functional limitation such as that present in Claims 31-33. Independent Claims 34, 45, and 46 have been amended to include a functional limitation. Claim 34 now recites, "wherein said polynucleotide is capable of increasing the yield of a plant;" Claim 45 now recites, "wherein said EG307 polynucleotide is capable of increasing the yield of a plant;" and Claim 46 now recites "wherein said EG307 gene is capable of increasing the yield of a plant." It is believed that the addition of these recitations is sufficient to overcome the rejection under 35 U.S.C. § 112, first paragraph.

Closing Remarks

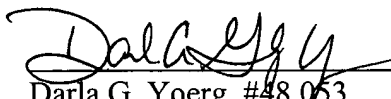
Applicant believes that the pending claims are in condition for allowance. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date:

June 21, 2005



Darla G. Yoerg, #48,053
Swanson & Bratschun, L.L.C.
1745 Shea Center Drive, Suite 330
Highlands Ranch, Colorado 80129
Telephone: (303) 268-0066
Facsimile: (303) 268-0065